

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Multi-Association Group (MAG) Plan for Regulation)	
of Interstate Services of Non-Price Cap Incumbent)	CC Docket No. 00-256
Local Exchange Carriers and Interexchange Carriers)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
_____)	

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ submits its reply comments in response to the Report and Order and Second Further Notice of Proposed Rulemaking² issued by the Federal Communications Commission (Commission or FCC) in the above-referenced proceeding. In these reply comments USTA addresses the Commission's tentative conclusion that an election of alternative regulation on a study area basis should only be available to the holding companies in which all non-average schedule companies file their own cost-based tariffs.³ In addition, USTA addresses the Commission's underlying concern for its tentative conclusion – whether any internal process or formula of the National Exchange Carrier

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 00-256 and 96-45, FCC 04-31 (rel. Feb. 26, 2004) (Report and Order or Second Further Notice).

³ See Second Further Notice, ¶91.

Association (NECA) could “insulate the remaining pool members from the risk that may be introduced by a carrier’s adoption of an alternative regulation plan.”⁴

The Commission should not adopt its tentative conclusion that would require all non-average schedule companies to file their own cost-based tariffs, rather than participate in NECA pools, when a holding company elects for some or all of its study areas to be regulated on an alternative basis. USTA asserts that there is nothing inherently contradictory about incentive regulation and participation in NECA pools. Not only is it feasible to retain carriers operating under incentive regulation in NECA pools, as NECA has indicated in its comments that it can adapt its pooling processes to accommodate the incentive regulation plans that have been proposed,⁵ but allowing carriers that choose incentive regulation to remain in the NECA pools makes good sense. USTA agrees with the position of a number of commenters in this proceeding that by allowing incentive plan companies to participate in NECA pools, the Commission’s concerns about exposing other pool members to risks of improper cost shifting should be alleviated by the simple fact that participation in the pools provides better assurance that incentive companies are operating in compliance with the Commission’s accounting and affiliate transaction rules.⁶ USTA also agrees with several commenters that maintain there are

⁴ Second Further Notice, ¶91.

⁵ NECA Comments at 4-7.

⁶ See NECA Comments at 3 (“pool data submissions are subject to extensive cost study reviews that are in addition to reviews that occur in the context of Commission access tariff proceedings. (citation omitted) The NECA rate banding process, which separates pool study areas into rate categories, (citation omitted) provides additional protection against improper cost shifting. . . . Moreover, sudden or unexpected changes in rate band levels may make improper cost shifting easier to detect. (citation omitted)”; ALLTEL, Madison River, and TDS Comments at 9 (“because there is an additional level of scrutiny for pool participants, cost shifting is less problematic”); OPASTCO Comments at 5 (“pool data submissions are subject to extensive cost study reviews that are in addition to reviews that occur in the context of the Commission’s access

significant benefits of allowing incentive companies to remain in NECA pools, notably the benefits of risk sharing; centralized tariff administration; charging lower than average rates to customers; maintaining stable monthly cash flows for all pooling carriers; and maintaining a stable base of lines and minutes, which deters volatility of rates and earnings.⁷ Finally, USTA agrees with OPASTCO that a decision to allow incentive companies to remain in NECA pools would likely “result in more carriers electing alternative regulation that may not have considered it otherwise,”⁸ or worse that “alternative regulation that disallows participation in the pools will not be an alternative worth considering for many small, rural ILECs.”⁹ Accordingly, the Commission should not prevent companies that elect incentive regulation for some or all of their study areas from participating in NECA pools and should not require such companies to withdraw study areas operating under incentive regulation from participating in NECA pools.

The Commission should adopt its tentative conclusion that any alternative regulation plan it adopts “will be optional on the part of the rate-of-return carrier and will permit a rate-of-return carrier to elect participation in the alternative plan by study area.”¹⁰ Despite the claims of MCI and AT&T that conversion of at least certain rate-of-return carriers to price cap or incentive regulation should be mandatory to guard against risks of improper cost allocation, such risks are

tariff proceedings”); and Wisconsin State Telecommunications Association Comments at 2 (“Any abuse that a holding company could perform to take advantage of having multiple study areas is at least as detectable *within* the pool, if not more so, than with study areas that are outside of the pool. In addition, any cost shifting or changing of cost allocations would be easily detectable.”)

⁷ See NECA Comments at 6, OPASTCO Comments at 5, Wisconsin State Telecommunications Association Comments at 3.

⁸ OPASTCO Comments at 2.

⁹ *Id.* at 5.

¹⁰ Second Further Notice, ¶86.

already minimized by existing federal and state regulatory checks imposed on incumbent local exchange carriers. More importantly though, if the Commission requires rate-of-return carriers to participate in incentive regulation, rather than allowing them to choose such regulation where it makes economic sense, the Commission may jeopardize the viability of many carriers. Rate-of-return carriers must be able to choose whether or not to participate in an alternative regulation plan.

Finally, USTA responds to the comments of AT&T, arguing that the Commission should require the broadest range of rate-of-return carriers to adopt incentive regulation based on the claim that access customers are not entitled to refunds when rate-of-return carriers overearn.¹¹ AT&T asks the Commission to grant its petition requesting forbearance from section 204(a)(3) of the Communications Act,¹² which includes a deemed lawful provision for streamlined tariff filings. In the alternative, AT&T asks the Commission to grant the petition for rulemaking filed by Western Wireless in which it seeks to eliminate rate-of-return regulation.¹³ USTA, joining with other interested parties, has previously filed comments in response to both the AT&T Petition and the Western Wireless Petition. In response to the AT&T Petition, USTA and other associations urged the Commission to deny the Petition because it asks the Commission to increase, rather than forbear from, regulation, which is inconsistent with Congress' intent in

¹¹ See generally AT&T Comments at 7-9.

¹² See *AT&T Petition Pursuant to 47 U.S.C. Section 160(c) of the Communications Act for Forbearance from Enforcement of Section 204(a)(3) of the Communications Act, As Amended*, AT&T Petition for Forbearance, WC Docket No. 03-256 (filed Dec. 3, 2003) (AT&T Petition).

¹³ See *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers; Federal-State Joint Board on Universal Service*, Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers, RM No. 10822, CC Docket No. 96-45 (filed Oct. 30, 2003) (Western Wireless Petition).

granting forbearance authority to the Commission.¹⁴ USTA incorporates those comments here by reference. In response to the Western Wireless Petition, USTA and other associations urged the Commission to deny the Petition because the Petition does nothing more than attempt to open a proceeding to address issues that are already under consideration in other contexts, which is a waste of the Commission's time and industry resources.¹⁵ USTA incorporates those comments here by reference. USTA reiterates that the Commission should not grant the AT&T Petition or the Western Wireless Petition for the same reasons previously stated in its comments.

¹⁴ See *AT&T Petition Pursuant to 47 U.S.C. Section 160(c) of the Communications Act for Forbearance from Enforcement of Section 204(a)(3) of the Communications Act, As Amended*, Joint Comments of ERTA, ITTA, NECA, NTCA, OPASTCO, USTA, and Western Telecommunications Alliance, WC Docket No. 03-256 (Jan. 30, 2004).

¹⁵ See *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers; Federal-State Joint Board on Universal Service*, Joint Comments of ERTA, ITTA, NECA, NTCA, OPASTCO, USTA, and Western Alliance, RM 10822, CC Docket No. 96-45 (Jan. 16, 2004).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on May 10, 2004, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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